

AMENDED IN SENATE AUGUST 20, 2008

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AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2541

Introduced by Assembly Member Bass

February 22, 2008

An act to amend Section 851.90 of, to amend and renumber Section 1000.8 of, and to add and repeal Chapter 2.6 (commencing with Section 1000.8) of Title 6 of Part 2 of, the Penal Code, relating to reentry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, Bass. Reentry courts: deferred entry of judgment.

Under existing law, the Department of Corrections and Rehabilitation is required to establish 3 pilot programs to provide intensive training and counseling for female parolees to assist in the successful reintegration of those parolees into the community, a pilot reentry program in East Palo Alto, and a pilot prerelease parole program in Alameda County. Existing law also requires the department to provide various education, drug treatment, and skills training to inmates and parolees. Existing law further requires the establishment of a Reentry Advisory Committee to advise the secretary on all matters related to

the successful statewide planning, implementation, and outcomes of all reentry programs and services provided by the department.

This bill would authorize a superior court, until January 1, 2012, to ~~develop and operate~~ *create* a deferred entry of judgment reentry program targeted at preventing recidivism among nonviolent low-level drug sales offenders ~~if the board of supervisors of that county so elects, as specified.~~ The bill would specify the characteristics of that program and the process for eligibility for the program. ~~This bill would also exclude statements, or information procured therefrom, made by the defendant to a probation officer, a treatment worker, or a person involved in a treatment assessment from subsequent proceedings, as specified.~~

~~The California Constitution requires that any statute allowing the exclusion of otherwise relevant evidence from criminal proceedings be passed by a $\frac{2}{3}$ vote of the membership in each house of the Legislature.~~

~~Because this bill would require the exclusion of otherwise relevant evidence from a criminal proceeding, it would require a $\frac{2}{3}$ vote of the membership in each house of the Legislature.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) ~~Every year, approximately 125,000 California prisoners are~~
- 4 ~~released from California prisons. Of those released, more than half~~
- 5 ~~will return to prison within two years and more than 70 percent~~
- 6 ~~will return within three years, many for committing more crimes,~~
- 7 ~~which will result in more victims.~~
- 8 (b) ~~Many former offenders exit prison utterly unprepared to live~~
- 9 ~~crime free, often not having addressed the underlying problems~~
- 10 ~~that contributed to their criminal behavior, including lack of~~
- 11 ~~employment, lack of job readiness, substance abuse problems,~~
- 12 ~~reentry problems, and lack of housing.~~
- 13 (c) ~~Approximately 95 percent of state prisoners will eventually~~
- 14 ~~be released. Thus, without an effective strategy for preventing~~
- 15 ~~former offenders from reentering prison, the safety of our~~
- 16 ~~communities is at enormous risk.~~

1 ~~(d) California taxpayers pay significantly when former offenders~~
2 ~~reoffend. For each person who ends up back in prison, taxpayers~~
3 ~~pay more than \$43,000 per year.~~

4 ~~(e) Successful models exist for planning for, supervising, and~~
5 ~~ultimately ensuring the successful, crime-free reentry of former~~
6 ~~offenders into society.~~

7 ~~(f)~~

8 (a) The San Francisco District Attorney's office has developed
9 an effective reentry program, Back On Track. Among low-level,
10 nonviolent drug sellers, the three-year recidivism rate for Back On
11 Track participants is significantly lower than the 53 percent
12 recidivism rate for the same population in state prison. As a result,
13 the Back On Track program has been selected as a national model.
14 *The act is intended to facilitate the replication of this successful*
15 *program.*

16 ~~(g)~~

17 (b) Successful reentry models combine a continuity of services
18 before and after release and legal mechanisms for holding former
19 offenders accountable for becoming self-sufficient and living
20 crime-free.

21 ~~(h)~~

22 (c) The most successful models for preventing recidivism
23 include public-private partnerships among law enforcement,
24 government agencies, business and labor associations, private
25 employers, and community-based organizations, formed to create
26 living wage employment opportunities for eligible former offenders
27 and to take advantage of existing programs and incentives for
28 hiring former offenders.

29 SEC. 1.5. Section 851.90 of the Penal Code is amended to read:

30 851.90. (a) (1) Whenever a person is diverted pursuant to a
31 drug diversion program administered by a superior court pursuant
32 to Section 1000.5 or is admitted to a deferred entry of judgment
33 program pursuant to Section 1000 or 1000.8, the person
34 successfully completes the program, and it appears to the judge
35 presiding at the hearing where the diverted charges are dismissed
36 that the interests of justice would be served by sealing the records
37 of the arresting agency and related court files and records with
38 respect to the diverted person, the judge may order those records
39 and files to be sealed, including any record of arrest or detention,

1 upon the written or oral motion of any party in the case, or upon
2 the court's own motion, and with notice to all parties in the case.

3 (2) If the order is made, the clerk of the court shall thereafter
4 not allow access to any records concerning the case, including the
5 court file, index, register of actions, or other similar records.

6 (3) If the order is made, the court shall give a copy of the order
7 to the defendant and inform the defendant that he or she may
8 thereafter state that he or she was not arrested for the charge.

9 (4) The defendant may, except as specified in subdivisions (b),
10 (c), and (d), indicate in response to any question concerning the
11 defendant's prior criminal record that the defendant was not
12 arrested or granted statutorily authorized drug diversion or deferred
13 entry of judgment for the offense.

14 (5) Subject to subdivisions (b), (c), and (d), a record pertaining
15 to an arrest resulting in the successful completion of a statutorily
16 authorized drug diversion or deferred entry of judgment program
17 shall not, without the defendant's permission, be used in any way
18 that could result in the denial of any employment, benefit, or
19 certificate.

20 (6) Sealing orders made pursuant to this subdivision shall not
21 be forwarded to the Department of Justice to be included or notated
22 in the department's manual or electronic fingerprint image or
23 criminal history record systems. Any sealing order made pursuant
24 to this subdivision and received by the Department of Justice need
25 not be processed by the department.

26 (b) The defendant shall be advised that, regardless of the
27 defendant's successful completion of a statutorily authorized drug
28 diversion or deferred entry of judgment program, the arrest upon
29 which the case was based shall be disclosed by the Department of
30 Justice in response to any peace officer application request, and
31 that, notwithstanding subdivision (a), this section does not relieve
32 the defendant of the obligation to disclose the arrest in response
33 to any direct question contained in any questionnaire or application
34 for a position as a peace officer, as defined in Section 830.

35 (c) The defendant shall be advised that, regardless of the
36 defendant's successful completion of a statutorily authorized drug
37 diversion or deferred entry of judgment program, the arrest upon
38 which the case was based shall be disclosed by the Department of
39 Justice or the court in which the matter was heard in response to
40 any subsequent inquiry by the district attorney, court, probation

1 department, or counsel for the defendant concerning the defendant's
2 eligibility for any statutorily authorized drug diversion or deferred
3 entry of judgment program in the future.

4 (d) A sealing order made pursuant to this section shall not apply
5 to any record or document received or maintained by the
6 Department of Justice; the court shall advise a defendant that,
7 notwithstanding the issuance of a sealing order pursuant to this
8 section, the Department of Justice shall continue to be able to
9 maintain and disseminate any records or documents received or
10 maintained by the department, as authorized by law.

11 SEC. 2. Section 1000.8 of the Penal Code is amended and
12 renumbered to read:

13 1000.6. (a) Where a person is participating in a deferred entry
14 of judgment program or a preguilty plea program pursuant to this
15 chapter, the person may also participate in a licensed methadone
16 or levoalphacetylmethadol (LAAM) program if the following
17 conditions are met:

18 (1) The sheriff allows a methadone program to operate in the
19 county jail.

20 (2) The participant allows release of his or her medical records
21 to the court presiding over the participant's preguilty or deferred
22 entry program for the limited purpose of determining whether or
23 not the participant is duly enrolled in the licensed methadone or
24 LAAM program and is in compliance with deferred entry or
25 preguilty plea program rules.

26 (b) If the conditions specified in paragraphs (1) and (2) of
27 subdivision (a) are met, participation in a methadone or LAAM
28 treatment program shall not be the sole reason for exclusion from
29 a deferred entry or preguilty plea program. A methadone or LAAM
30 patient who participates in a preguilty or deferred entry program
31 shall comply with all court program rules.

32 (c) A person who is participating in a deferred entry of judgment
33 program or preguilty plea program pursuant to this chapter who
34 participates in a licensed methadone or LAAM program shall
35 present to the court a declaration from the director of the methadone
36 or LAAM program, or the director's authorized representative,
37 that the person is currently enrolled and in good standing in the
38 program.

39 (d) Urinalysis results that only establish that a person described
40 in this section has ingested or taken the methadone administered

1 or prescribed by a licensed methadone or LAAM program shall
2 not be considered a violation of the terms of the deferred entry of
3 judgment or preguilty plea program under this chapter.

4 (e) Except as provided in subdivisions (a) to (d), inclusive, this
5 section shall not be interpreted to amend any provisions governing
6 deferred entry and diversion programs.

7 SEC. 3. Chapter 2.6 (commencing with Section 1000.8) is
8 added to Title 6 of Part 2 of the Penal Code, to read:

9
10 CHAPTER 2.6. DEFERRED ENTRY OF JUDGMENT REENTRY
11 PROGRAM
12

13 1000.8. A superior court may ~~develop and operate~~ *create* a
14 deferred entry of judgment reentry program targeted at preventing
15 recidivism among nonviolent low-level drug sales offenders. No
16 defendant who has been convicted of a violation of an offense
17 enumerated in subdivision (c) of Section 290 or in Section 1192.7
18 shall be eligible for the program established in this chapter. ~~The~~
19 *When creating this program, the* prosecuting attorney, together
20 with the presiding judge and a representative of the criminal
21 defense bar selected by the presiding judge of the superior court
22 may agree in writing to establish a “Back on Track” deferred entry
23 program pursuant to the provisions of this chapter. The agreement
24 shall specify which low-level drug sales offenses under the Health
25 and Safety Code will be eligible for the program and a process for
26 selecting participants. The program shall have the following
27 characteristics:

28 (a) A dedicated calendar ~~or a locally developed deferred entry~~
29 ~~of judgment program.~~

30 (b) Leadership by a superior court judicial officer who is
31 assigned by the presiding judge.

32 (c) An appropriate level of transitional services for each
33 participant, based on available resources from county and
34 community reentry providers and other agencies, ~~to address the~~
35 ~~issues identified during the assessment performed in Section~~
36 ~~1000.9.~~ Local justice agencies as well as county health, mental
37 health, and human services agency representatives shall participate
38 with the superior court in developing a plan regarding the scope
39 and availability of resources that will be made available to

1 participants in this program. The transitional services may include
2 the following:

- 3 (1) Job training, readiness, and placement.
- 4 (2) Life skills and “soft” skills training.
- 5 (3) Mental health treatment.
- 6 (4) Substance abuse treatment.
- 7 (5) Assistance with obtaining identification cards and driver’s
8 licenses.

9 (6) Assistance with expungement of criminal and arrests records
10 and other barriers to employment, where appropriate.

11 (7) Parenting skills and assistance with child support obligations.

12 (d) Clearly defined criteria for successful progress and
13 completion of the program.

14 (e) Legal incentives for defendants for progress and successful
15 completion of the program, including modification of conditions
16 or terms of probation, dismissal or reduction of criminal charges
17 upon successful completion of the program, and assistance with
18 expungement of prior criminal convictions.

19 (f) Graduated sanctions and frequent, ongoing appearances
20 before the court regarding the progress of the defendant to ensure
21 that the defendant successfully completes the program and complies
22 with any other terms and conditions that will optimize the
23 likelihood that the defendant will complete the program. The court
24 may use available legal mechanisms including return to custody
25 if necessary, for failure to comply with the supervised plan.

26 (g) The program may develop a local, public-private partnership
27 between law enforcement, government agencies, private employers,
28 and community-based organizations for the purpose of creating
29 meaningful employment opportunities for eligible former offenders
30 and to take advantage of existing programs and incentives for
31 hiring defendants participating in the program.

32 1000.9. The prosecuting attorney shall determine whether a
33 defendant is eligible for a deferred entry of judgment reentry
34 program.

35 ~~(a) To assist in determining whether the defendant is eligible~~
36 ~~for the program, the prosecuting attorney, or the court on its own,~~
37 ~~may make a motion to require that the defendant undergo an~~
38 ~~individualized assessment to determine what support services,~~
39 ~~treatment plans, and programs are needed to address the~~
40 ~~defendant’s criminal behavior. The court may order a defendant~~

1 ~~to perform an appropriate amount of community service to assist~~
2 ~~in assessing the defendant's needs and fitness for the program.~~

3 ~~(b)~~

4 (a) If the prosecuting attorney determines that this section may
5 be applicable to the defendant, he or she shall advise the defendant
6 and his or her attorney in writing of that determination. This
7 notification shall include the following:

8 (1) A full description of the procedures for deferred entry of
9 judgment.

10 (2) A general explanation of the role and authority of the
11 prosecuting attorney, the program, and the court in the process.

12 (3) A clear statement that in lieu of trial, the court may grant
13 deferred entry of judgment with respect to the current crime or
14 crimes charged if the defendant pleads guilty to each charge and
15 waives time for the pronouncement of judgment, and that, upon
16 the defendant's successful completion of the program and the
17 motion of the prosecuting attorney, the court will dismiss the
18 charge or charges against the defendant and the provisions of
19 Sections 851.90 and 1203.4 will apply.

20 (4) A clear statement that failure to comply with any condition
21 under the program may result in the prosecuting attorney or the
22 court making a motion for entry of judgment, whereupon the court
23 will render a finding of guilty to the charge or charges pled, enter
24 judgment, and schedule a sentencing hearing as otherwise provided
25 in this code.

26 (5) An explanation of criminal record retention and disposition
27 resulting from participation in the deferred entry of judgment
28 program and the defendant's rights relative to answering questions
29 about his or her arrest and deferred entry of judgment following
30 successful completion of the program.

31 ~~(e)~~

32 (b) If the prosecuting attorney determines that the defendant is
33 eligible for the program, the prosecuting attorney shall state for
34 the record the grounds upon which the determination is based and
35 shall make this information available to the defendant and his or
36 her attorney. This procedure is intended to allow the court to set
37 the hearing for deferred entry of judgment at the arraignment.

38 ~~(d)~~

39 (c) If the prosecuting attorney determines that the defendant is
40 ineligible for the program, the prosecuting attorney shall state for

the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal. If the prosecuting attorney does not deem the defendant eligible, or the defendant does not consent to participate, the proceedings shall continue as in any other case.

(e)

(d) Upon a motion by the prosecuting attorney for an entry of judgment, before entering a judgment of guilty, the court may hold a hearing to determine whether the defendant has failed to comply with the program and should be terminated from the program.

~~(f) (1) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any assessment or investigation conducted by the probation department or treatment program pursuant to this section, and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.~~

~~(2) No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer, drug program worker, or other person assessing the defendant prior to or subsequent to the granting of deferred entry of judgment, shall be admissible in any action or proceeding, including a sentencing hearing.~~

1000.10. The following provisions apply to this chapter:

(a) A defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.

~~(b) A county is subject to this chapter only upon election by a resolution of the county board of supervisors to start a deferred entry of judgment reentry program pursuant to this chapter and the availability of local funding for that program.~~

(b) Counties that opt to create a deferred entry of judgment reentry program pursuant to Section 1000.8 of the Penal Code shall not seek state reimbursement for costs associated with the implementation, development, or operation of that program.

1 (c) Local law enforcement agencies and counties administering
2 the programs may seek state, federal, or private funding for the
3 purpose of implementing the provisions of this chapter.
4 1000.11. This chapter shall remain in effect until January 1,
5 2012, and as of that date is repealed, unless a later enacted statute
6 deletes or repeals that date.

O